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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 204, 209, 212, 225, and 252

RIN 0750-AI34

**Defense Federal Acquisition Regulation Supplement: State
Sponsors of Terrorism (DFARS Case 2014-D014)**

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to clarify and relocate text relating to state sponsors of terrorism (as identified by the Department of State), add an explicit representation, and conform the terminology.

DATES: Effective [Insert date of publication in the FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Ms. Amy G. Williams, telephone 571-372-6106.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the Federal Register at 79 FR 45666 on August 5, 2014, to clarify and relocate coverage relating to state sponsors of terrorism (as identified by the

Department of State), add an explicit representation, and conform the terminology. No respondents submitted public comments in response to the proposed rule.

This rule is part of DoD's retrospective plan, completed in August 2011, under Executive Order 13563, "Improving Regulation and Regulatory Review." DoD's full plan and updates can be accessed at:

<http://www.regulations.gov/#!docketDetail;dct=FR+PR+N+O+SR;rpp=10;po=0;D=DOD-2011-OS-0036>.

II. Discussion and Analysis

No public comments were received. The final rule is the same as the proposed rule, except for minor edits.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated

September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

DoD certifies that this rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because this rule will only have an impact on a firm, or a subsidiary of a firm, in which the government of a country that is a state sponsor of terrorism has a significant interest.

The number of domestic entities significantly impacted by this rule will be minimal, if any. For the definition of "small business," the Regulatory Flexibility Act refers to the Small Business Act, which in turn allows the U.S. Small Business Administration (SBA) Administrator to specify detailed definitions or standards (5 USC 601(3) and 15 USC 632(a)). The SBA regulations at 13 CFR 121.105 discuss who is a small business: "(a)(1) Except for small agricultural cooperatives, a business concern eligible for assistance from SBA as a small business is a business entity organized for profit, with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labor."

V. Paperwork Reduction Act

The rule contains information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C chapter 35); however, these changes to the DFARS do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Number 0704-0187, entitled "Information Collection in Support of the DoD Acquisition Process (Various Miscellaneous Requirements)." This final rule removes provision 252.209-7001, Disclosure of Ownership or Control by the Government of a Terrorist Country, and replaces it with provision 252.225-7050, Disclosure of Ownership or Control by the Government of a Country that is a State Sponsor of Terrorism. The burden in clearance 0704-0187 previously associated with the provision 252.209-7001, which is now associated with provision 252.225-7050, remains unchanged and is estimated at 1 hour, because such disclosure occurs rarely, if ever. 10 U.S.C. prohibits award to a firm or a subsidiary of a firm if the government of country that is a state sponsor of terrorism has a significant interest in the firm or subsidiary, unless the Secretary of Defense grants a waiver.

List of Subjects in 48 CFR Parts 204, 209, 212, 225, and 252

Government procurement.

Manuel Quinones,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 204, 209, 212, 225, and 252 are proposed to be amended as follows:

1. The authority citation for parts 204, 209, 212, 225, and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 204—ADMINISTRATIVE MATTERS

2. Amend section 204.1202 by—

a. Removing paragraph (2)(i);

b. Redesignating paragraphs (2)(ii) through (x) as (2)(i) through (ix), respectively; and

c. Adding new paragraph (2)(x) to read as follows:

204.1202 Solicitation provision.

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(2) * * *

(x) 252.225-7050, Disclosure of Ownership or Control by the Government of a Country that is a State Sponsor of Terrorism.

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PART 209—CONTRACTOR QUALIFICATIONS

3. Amend section 209.104-1, by revising paragraph (g)(i) to read as follows:

209.104-1 General standards.

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(g)(i) *Ownership or control by the government of a country that is a state sponsor of terrorism. (See 225.771.)*

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4. Revise section 209.104-70 to read as follows:

209.104-70 Solicitation provision.

Use the provision at 252.209-7002, Disclosure of Ownership or Control by a Foreign Government, in all solicitations, including those subject to the procedures in FAR part 13, when access to proscribed information is necessary for contract performance. If the solicitation includes the provision at FAR 52.204-7, do not separately list the provision 252.209-7002 in the solicitation.

5. Amend section 209.405, by revising paragraph (b)(i) to read as follows:

209.405 Effect of listing.

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(b)(i) The Procurement Cause and Treatment Code "H" annotation in the Exclusions section of the System for Award Management (SAM Exclusions) identifies contractor facilities where no part

of a contract or subcontract may be performed because of a violation of the Clean Air Act (42 U.S.C. 7606) or the Clean Water Act (33 U.S.C. 1368).

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6. Revise section 209.405-2 to read as follows:

209.405-2 Restrictions on subcontracting.

(a) The contracting officer shall not consent to any subcontract with a firm, or a subsidiary of a firm, that is identified by the Secretary of Defense in SAM Exclusions as being owned or controlled by the government of a country that is a state sponsor of terrorism unless the agency head states in writing the compelling reasons for the subcontract. (See also 225.771.)

7. Revise section 209.409 to read as follows:

209.409 Solicitation provision and contract clause.

Use the clause at 252.209-7004, Subcontracting with Firms that are Owned or Controlled by the Government of a Country that is a State Sponsor of Terrorism, in solicitations and contracts with a value of \$150,000 or more.

PART 212—ACQUISITION OF COMMERCIAL ITEMS

8. Amend section 212.301 by—

a. Removing paragraph (f)(xi);

b. Redesignating paragraphs (f)(xii) through (xlvi) as (xi) through (xlvii); and

b. Adding a new paragraph (f)(xlvi) to read as follows:

212.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

(f) * * * * *

(xlvi) Use the provision at 252.225-7050, Disclosure of Ownership or Control by the Government of a Country that is a State Sponsor of Terrorism, as prescribed in 225.771-5, to comply with 10 U.S.C. 2327(b).

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PART 225—FOREIGN ACQUISITION

225.701 [Amended]

9. In section 225.701, remove the section text.

10. Add sections 225.771, 225.771-0, 225.771-1, 225.771-2, 225.771-3, 225.771-4, and 225.771-5 to subpart 225.7 to read as follows:

225.771 Prohibition on contracting or subcontracting with a firm that is owned or controlled by the government of a country that is a state sponsor of terrorism.

225.771-0 Scope.

This section implements 10 U.S.C. 2327(b).

225.771-1 Definition.

"State sponsor of terrorism," as used in this section, is defined in the provision at 252.225-7050, Disclosure of Ownership or Control by the Government of a Country that is a State Sponsor of Terrorism.

225.771-2 Prohibition.

(a) The contracting officer shall not award a contract of \$150,000 or more to a firm when a foreign government that is a state sponsor of terrorism owns or controls, either directly or indirectly, a significant interest in-

(i) The firm;

(ii) A subsidiary of the firm; or

(iii) Any other firm that owns or controls the firm.

(b) For restrictions on subcontracting with a firm, or a subsidiary of a firm, that is identified by the Secretary of Defense as being owned or controlled by the government of a country that is a state sponsor of terrorism, see 209.405-2.

225.771-3 Notification.

Any disclosure that the government of a country that is a state sponsor of terrorism has a significant interest in an offeror, a subsidiary of an offeror, or any other firm that owns or controls an offeror shall be forwarded through agency channels to the address at PGI 225.771-3.

225.771-4 Waiver of prohibition.

The prohibition in 225.771-2 may be waived if the Secretary of Defense determines that a waiver is not inconsistent with the national security objectives of the United States in accordance with 10 U.S.C. 2327(c).

225.771-5 Solicitation provision.

Use the provision at 252.225-7050, Disclosure of Ownership or Control by the Government of a Country that is a State Sponsor of Terrorism, in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial items (other than commercial satellite services), that are expected to result in contracts of \$150,000 or more. If the solicitation includes the provision at FAR 52.204-7, do not separately list the provision 252.225-7050 in the solicitation.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

11. Amend section 252.204-7007 by—

- a. Removing the clause date "(AUG 2014)" and adding "(DEC 2014)" in its place;
- b. Removing paragraph (d)(1)(i);
- c. Redesignating paragraphs (d)(1)(ii) through (v) as (d)(1)(i) through (iv); and
- d. Adding a new paragraph (d)(1)(v).

The addition reads as follows:

**252.204-7007 Alternate A, Annual Representations and
Certifications.**

* * * * *

(d) (1) * * *

(v) 252.225-7050, Disclosure of Ownership or Control by the Government of a Country that is a State Sponsor of Terrorism. Applies to all solicitations expected to result in contracts of \$150,000 or more.

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252.209-7001 [Removed and Reserved]

12 Remove and reserve section 252.209-7001.

252.209-7002 [Amended]

13. Amend section 252.209-7002 introductory text by removing "209.104-70(b)" and adding "209.104-70" in its place.

14. Revise section 252.209-7004 to read as follows:

252.209-7004 Subcontracting with Firms that are Owned or Controlled by the Government of a Country that is a State Sponsor of Terrorism.

As prescribed in 209.409, use the following clause:

**SUBCONTRACTING WITH FIRMS THAT ARE OWNED OR CONTROLLED BY THE
GOVERNMENT OF A COUNTRY THAT IS A STATE SPONSOR OF TERRORISM
(DEC 2014)**

(a) Unless the Government determines that there is a compelling reason to do so, the Contractor shall not enter into

any subcontract in excess of \$30,000 with a firm, or a subsidiary of a firm, that is identified in the Exclusions section of the System for Award Management System (SAM Exclusions) as being ineligible for the award of Defense contracts or subcontracts because it is owned or controlled by the government of a country that is a state sponsor of terrorism.

(b) A corporate officer or a designee of the Contractor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party that is identified, in SAM Exclusions, as being ineligible for the award of Defense contracts or subcontracts because it is owned or controlled by the government of a country that is a state sponsor of terrorism. The notice must include the name of the proposed subcontractor and the compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion in SAM Exclusions.

(End of clause)

15. Add section 252.225-7050 to read as follows:

252.225-7050 Disclosure of Ownership or Control by the Government of a Country that is a State Sponsor of Terrorism.

As prescribed in 225.771-5, use the following provision:

DISCLOSURE OF OWNERSHIP OR CONTROL BY THE GOVERNMENT OF A COUNTRY THAT IS A STATE SPONSOR OF TERRORISM (DEC 2014)

(a) Definitions. As used in this provision—

Government of a country that is a state sponsor of terrorism includes the state and the government of a country that is a state sponsor of terrorism, as well as any political subdivision, agency, or instrumentality thereof.

Significant interest means—

(i) Ownership of or beneficial interest in 5 percent or more of the firm's or subsidiary's securities. Beneficial interest includes holding 5 percent or more of any class of the firm's securities in "nominee shares," "street names," or some other method of holding securities that does not disclose the beneficial owner;

(ii) Holding a management position in the firm, such as a director or officer;

(iii) Ability to control or influence the election, appointment, or tenure of directors or officers in the firm;

(iv) Ownership of 10 percent or more of the assets of a firm such as equipment, buildings, real estate, or other tangible assets of the firm; or

(v) Holding 50 percent or more of the indebtedness of a firm.

State sponsor of terrorism means a country determined by the Secretary of State, under section 6(j)(1)(A) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)(1)(A)), to be

a country the government of which has repeatedly provided support for acts of international terrorism. As of the date of this provision, state sponsors of terrorism include: Cuba, Iran, Sudan, and Syria.

(b) Prohibition on award. In accordance with 10 U.S.C. 2327, unless a waiver is granted by the Secretary of Defense, no contract may be awarded to a firm if the government of a country that is a state sponsor of terrorism owns or controls a significant interest in—

- (1) The firm;
- (2) A subsidiary of the firm; or
- (3) Any other firm that owns or controls the firm.

(c) Representation. Unless the Offeror submits with its offer the disclosure required in paragraph (d) of this provision, the Offeror represents, by submission of its offer, that the government of a country that is a state sponsor of terrorism does not own or control a significant interest in—

- (1) The Offeror;
- (2) A subsidiary of the Offeror; or
- (3) Any other firm that owns or controls the Offeror.

(d) Disclosure. (1) The Offeror shall disclose in an attachment to its offer if the government of a country that is a state sponsor of terrorism owns or controls a significant

interest in the Offeror; a subsidiary of the Offeror; or any other firm that owns or controls the Offeror.

(2) The disclosure shall include—

(i) Identification of each government holding a significant interest; and

(ii) A description of the significant interest held by each government.

(End of provision)

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